

144660

BIG RIVER ZINC CORPORATION

**ROUTE 3 & MONSANTO AVENUE
SAUGET, ILLINOIS 62201**

October 8, 1997

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RECEIVED
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**SUPERFUND PROGRAM
MANAGEMENT BRANCH**

Mr. Carlton D. Cuffman
ATTN: SM-5J
U. S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

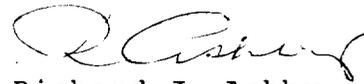
Re: Request for Information Pursuant to Section 104(e) of CERCLA
for the Sauget Areas I and II Pre-National Priorities List
Superfund Sites in Sauget/Cahokia, Illinois

Dear Mr. Cuffman:

Enclosed is the requested copy of the Asset Sales Agreement dated
January 16, 1996, between Korea Zinc Company (USA), Inc. (which
subsequently changed its name to "Big River Zinc Corporation")
and Big River Minerals Corporation, Big River Zinc Corporation
(which subsequently changed its name), and Sauget Realty
Corporation. The asset sale actually closed on April 8, 1996.

If you have any questions concerning this, please contact me.

Very truly yours,


Richard J. Ashby

ASSET PURCHASE AGREEMENT

dated as of January 16, 1996

between

KOREA ZINC COMPANY (USA), INC.

BIG RIVER MINERALS CORPORATION,

BIG RIVER ZINC CORPORATION,

and

SAUGET REALTY CORPORATION

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ASSET PURCHASE AGREEMENT

Agreement, dated as of January 16, 1996, between Korea Zinc Company (USA), Inc., a Delaware corporation with offices c/o Proskauer Rose Goetz & Mendelsohn LLP, 1585 Broadway, New York, New York 10036 (the "Purchaser"), Big River Minerals Corporation, a Delaware corporation with offices at 150 North Meramec Avenue, Suite 300, St. Louis, Missouri 63105-3753 (the "Parent"), Big River Zinc Corporation, a Delaware corporation with offices at Route 3 and Monsanto Avenue, Sauget, Illinois 62201 ("BRZ"), and Sauget Realty Corporation, a Delaware corporation with offices at Route 3 and Monsanto Avenue, Sauget, Illinois 62201 ("SRC").

W I T N E S S E T H :

WHEREAS, the Parent owns all the outstanding capital stock of BRZ, which is in the business of producing and selling zinc and related products at an electrolytic zinc refinery located in Sauget, Illinois, and all the outstanding capital stock of SRC, which owns certain real property located in East St. Louis, Illinois; and

WHEREAS, the Purchaser desires to acquire certain properties and assets and the business and good will of BRZ and SRC in exchange for cash and the assumption of certain obligations and liabilities of BRZ and SRC as hereinafter provided, and BRZ and SRC desire to effect such exchange.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

L *Representations and Warranties of the Parent, BRZ, and SRC*

The Parent, BRZ, and SRC jointly and severally represent and warrant to the Purchaser as follows:

§1.01 *Organization*

Each of BRZ and SRC is a corporation duly organized, validly existing, and in good standing under the laws of Delaware, with all requisite power and authority, and all necessary consents, authorizations, approvals, orders, licenses, certificates, and permits of and from, and declarations and filings with, all federal, state, local, and other governmental authorities and all courts and tribunals, to own, lease, license, and use its properties and assets and to carry on the business in which it is now engaged.

§1.02 *Qualifications*

Each of BRZ and SRC is duly licensed or qualified to transact business and is in good standing as a foreign corporation under the laws of the jurisdictions identified in Schedule 1.02, which constitute all jurisdictions in which its ownership, leasing, licensing, or use of property or assets or the conduct of its business makes such qualification necessary, except where the failure to be so licensed or qualified and in good standing would not materially adversely affect it.

§1.03 *No Subsidiaries*

Neither BRZ nor SRC owns any capital stock, warrants, notes, debentures, bonds, scrip rights, options, calls, or any guarantee of any of the foregoing or any obligations or instruments evidencing the right to purchase or effect a conversion into any of the foregoing, nor is BRZ or SRC a party to any contract relating to the issuance, grant, or

transfer of any of the foregoing, whether or not authorized, issued, or outstanding, or any interest in any corporation, partnership, joint venture, or other entity.

§1.04 *Capitalization*

The authorized capital stock of BRZ consists of 1,000 shares of common stock, par value \$100.00 per share ("BRZ Common Stock"), of which 10 shares are outstanding. The authorized capital stock of SRC consists of 1,000 shares of common stock, par value \$100.00 per share ("SRC Common Stock"), of which 10 shares are outstanding. Except as set forth in Schedule 1.04, each outstanding share of BRZ Common Stock and SRC Common Stock is duly authorized, validly issued, fully paid, and nonassessable, has not been issued and is not owned or held in violation of any preemptive right of stockholders, and is owned of record and beneficially by the Parent in each case free and clear of all liens, security interests, pledges, charges, encumbrances, stockholders' agreements, and voting trusts. There is no commitment, plan, or arrangement to issue, and no outstanding option, warrant, security, instrument, or other right calling for the issuance of, any share of capital stock of BRZ or SRC or any security or other instrument convertible into, exercisable for, or exchangeable for the capital stock of BRZ or SRC.

§1.05 *Financial Condition*

BRZ and SRC have delivered to the Purchaser true and correct copies of the following: unaudited combining balance sheets of BRZ and SRC as of the end of each of the five years ended December 31, 1994; the unaudited combining balance sheet of BRZ and SRC as of April 30, 1995; unaudited combining statements of income and cash flows of BRZ and SRC for each of the five years ended December 31, 1994; and the unaudited combining statement of income and cash flows of BRZ and SRC for the four months ended April 30,

1995. Each such balance sheet presents fairly the financial condition, assets, liabilities, and stockholders' equity of BRZ and SRC as of its date; each such statement of income presents fairly the results of operations of BRZ and SRC for the period indicated; and each such statement of cash flows presents fairly the information purported to be shown therein. Except as set forth in Schedule 1.05, the financial statements referred to in this Section 1.05 have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved and are in accordance with the books and records of BRZ and SRC. Neither BRZ nor SRC has any liability of any kind, whether contingent, absolute or otherwise, to any third party (including the Parent), except those (v) reflected on the combining balance sheet at April 30, 1995 referred to above (or the notes thereon), (w) disclosed as a liability on a Schedule to this Agreement, (x) arising in the ordinary course since April 30, 1995 consistent with past practice, and (y) future performance obligations under plans, contracts, commitments, leases, agreements, instruments, and understandings not required to be listed in a Schedule to this Agreement and not required to be set forth on the balance sheets as of April 30, 1995 referred to above. Except as set forth in Schedule 1.05, since April 30, 1995:

(a) There has not been a material adverse change in the financial condition, results of operations, business, properties, assets, or liabilities of BRZ and SRC, taken as a whole;

(b) Neither BRZ nor SRC has authorized, declared, paid, or effected any dividend or liquidating or other distribution in respect of its capital stock or any direct or indirect redemption, purchase, or other acquisition of any stock of BRZ or SRC.

(c) The operations and business of BRZ and SRC have been conducted in all material respects only in the ordinary course. BRZ has not been unable to obtain any raw materials necessary to operate the business of BRZ in substantially the same

manner as it is currently operated and neither the Parent nor BRZ knows of any reason why the Purchaser would be unable to obtain such raw materials or inventory after the Closing.

(d) Neither BRZ nor SRC has suffered an extraordinary loss (whether or not covered by insurance) or waived any right of substantial value.

(e) Except as set forth in Schedule 1.05(e), BRZ and SRC have paid their accounts payable and accrued expenses in the ordinary course of business consistent with past practices.

§1.06 Tax

For the purpose of this Agreement:

"Code" means the Internal Revenue Code of 1986, as the same may be amended from time to time.

"Parent Affiliated Group" means, with respect to federal income Taxes, the affiliated group of corporations (within the meaning of Section 1504(a) of the Code) the common parent of which is the Parent and which affiliated group includes BRZ and SRC.

"Tax" or "Taxes" means all taxes, including, but not limited to, income (whether net or gross), excise, sales, transfer, gains, gross receipts, privilege of doing business, payroll, wage, unemployment, workers' compensation, social security, occupation, use, value added, capital, gross receipts, franchise license, severance, stamp, premium, windfall profits, environmental (including taxes under Section 59A of the Code), capital stock, profits, withholding, disability, real property, personal property, registration, alternative or add on minimum, estimated or other tax of any kind whatsoever (whether disputed or not) imposed by any Tax authority, including any related charges, fees, interest, penalties, additions to tax or other assessments.

"Tax Arbitrator" means a nationally recognized accounting firm that represents neither the Parent nor the Purchaser nor any affiliate of either party. The Parent and the Purchaser hereby designate Price Waterhouse LLP, St. Louis office, to act as Tax Arbitrator, unless it is later disqualified by reason of establishing a relationship with either party or an affiliate of either party. In the event it is so disqualified, the parties shall promptly designate a replacement Tax Arbitrator.

"Tax Return" means all returns, reports, estimates, information returns, and statements (including any related or supporting information) filed or to be filed with any Tax authority in connection with the determination, assessment, collection, or administration of any Taxes.

Except as provided in Schedule 1.06:

(a) All federal, foreign, state, county and local Tax Returns required to be filed on or prior to the Closing Date by, or with respect to, each of BRZ and SRC have been filed in timely fashion, including, without limitation, all Tax Returns for the Parent Affiliated Group. All such Tax Returns were true and accurate in all respects when filed. All Taxes owed by, or with respect to, each of BRZ and SRC for taxable years ending on or before December 31, 1994 have been fully paid or accrued on the unaudited combining balance sheet of BRZ and SRC as of December 31, 1994 and referred to in Section 1.05. The Parent has furnished to the Purchaser copies of all income and franchise Tax Returns filed by, or with respect to each of BRZ and SRC for the Tax years 1989 through 1993 and (ii) copies of all examination reports and statements of deficiencies with respect to each of BRZ and SRC for the Tax years 1989 through 1993, pertaining to (A) Federal or state income or franchise Taxes and (B) in the case of other Taxes, where there has been an asserted underpayment in excess of \$50,000.

(b) The federal Tax Returns through 1993 and the Illinois state income and franchise Tax Returns through 1993 referred to in the first sentence of paragraph (a) have been examined by the appropriate Tax authority or the respective periods for assessment of Taxes in respect of which such Tax Returns were required to be filed have expired. All Tax deficiencies asserted or assessments made as a result of such examinations have been paid in full. There is presently no Tax proceeding being conducted with respect to BRZ or SRC, no issues that have been raised by the relevant Tax authority in writing are currently pending, and neither the Parent, nor BRZ, nor SRC has received notification from any Tax authority that it intends to commence a Tax proceeding. No waivers of statutes of limitations have been given or requested with respect to any Taxes of, or attributable to, BRZ or SRC. There are no liens for any Taxes (other than Taxes not yet due and owing) on the assets of BRZ or SRC. The Parent is not a "foreign person" as that term is defined in Section 1445(f)(3) of the Code. Neither BRZ nor SRC has made or will become obligated to make, or will as a result of any event connected with the transactions contemplated by this Agreement become obligated to make, any "excess parachute payment" as defined in Section 280(g) of the Code (without regard to subsection (b)(4) thereof). Neither BRZ nor SRC is a party to any tax sharing or tax indemnification agreement or arrangement, whether formal or informal, and neither BRZ nor SRC has any obligation or liability under any such agreement or arrangement. Neither BRZ nor SRC has undergone a change in accounting method that currently requires, or will require, an adjustment to taxable income under Section 481 of the Code. All Taxes BRZ or SRC is or was obligated to withhold from amounts owing or paid to any employee, creditor or third party have been fully paid or properly accrued. Price Waterhouse LLP has never performed any material services for the Parent, BRZ, SRC, or any other member of the Parent Affiliated Group.

§1.07 *Litigation and Claims*

Except as set forth in Schedule 1.07, there is no litigation, arbitration, claim, governmental or other proceeding (formal or informal), or investigation pending, or to the knowledge of BRZ, SRC, or the Parent, threatened (or any valid basis therefor known to BRZ, SRC, or the Parent) with respect to BRZ, SRC, or any of their respective businesses, properties, or assets, or with respect to their officers and directors in their capacities as such. Except as set forth in Schedule 1.07, neither BRZ nor SRC is subject to any present or threatened strike or other labor disturbance nor, to the knowledge of BRZ, SRC, or the Parent, is any union attempting to represent any employee of BRZ or SRC as collective bargaining agent. Neither BRZ nor SRC is in violation of, or in default with respect to, any law, rule, regulation, order, judgment, or decree, other than as set forth in Schedule 1.07; nor is BRZ or SRC required to take any action in order to avoid such violation or default, other than as set forth in Schedule 1.07.

§1.08 *Properties*

BRZ has good and marketable title in fee simple to all real properties and good title to all other properties and assets used in its business or owned by it (except such real and other properties and assets as are held pursuant to leases or licenses), free and clear of all liens, mortgages, security interests, pledges, charges, and encumbrances, except such as are listed in Schedule 1.08 and except for Permitted Liens ("Permitted Liens" means mechanics', carriers', workmen's, repairmen's, and other liens arising in the ordinary course of business and liens for taxes, assessments, and other governmental charges not due and payable or that may be paid without penalty, in each case that do not materially detract from the value or utility of the asset to which the lien relates).

(a) Attached as Schedule 1.08(a)(A) is a true and complete list of all real properties owned by BRZ or SRC or leased by BRZ or SRC from or to a third party. Except as set forth in Schedule 1.08(a)(B), all real and other tangible properties and assets owned, leased, or licensed by BRZ or SRC are in good and usable condition (reasonable wear and tear that does not affect adversely the operation of the business of BRZ or SRC excepted).

(b) No real property owned or leased by BRZ or SRC lies in an area that is, or to the knowledge of BRZ, SRC, or the Parent will be, subject to zoning, use, or building code restrictions that would prohibit or prevent the continued effective ownership, leasing, or use of such real property in the business in which BRZ or SRC is now engaged.

(c) The real and other properties and assets (including Intangibles) owned by BRZ or leased or licensed by BRZ from a third party constitute all such properties and assets necessary to conduct its business substantially in the manner as presently conducted.

(d) None of the assets of BRZ or SRC is subject to any governmental decree or order to be sold of which the Parent, BRZ, or SRC has received notice, or is being condemned, expropriated, or taken by eminent domain or otherwise by any United States or foreign, federal, state, provincial, or local public authority with or without payment of compensation therefor, nor to the knowledge of the Parent, BRZ, or SRC has any such condemnation, expropriation, or taking been proposed. There is no existing or, to the knowledge of the Parent, BRZ, or SRC, proposed or contemplated plan to modify or realign any street or highway adjoining the real property of BRZ or SRC, except as set forth in Schedule 1.08(d)(C).

§1.09 *Contracts and Other Instruments*

The Parent has furnished to the Purchaser (a) the certificate of incorporation (or other charter document) and by-laws of BRZ and SRC and all amendments thereto, as presently in effect, and (b) the following: (i) true and correct copies of all contracts, agreements, and instruments listed in Schedule 1.09; (ii) true and correct copies of all leases and licenses listed in Schedule 1.08(a)(A) or Schedule 1.11; and (iii) true and correct written descriptions of all unwritten supply, distribution, agency, financing, and other arrangements and understandings referred to in Schedule 1.09 providing for any payments of \$120,000 or more in any one year. Except as set forth in Schedule 1.09, neither BRZ nor SRC, nor, to the knowledge of the Parent, BRZ, or SRC, any other party to any such contract, agreement, instrument, lease, or license is now in violation or breach of, or in default with respect to complying with, any material term thereof, and each such contract, agreement, instrument, lease, or license is in full force. Neither BRZ nor SRC is a party to any joint venture, partnership, or other arrangement or contract that is treated as a partnership for federal income tax purposes. Except as set forth in Schedule 1.09, each unwritten supply, distribution, agency, financing, or other arrangement or understanding is a valid and continuing arrangement or understanding; no party to any such arrangement or understanding has given notice of termination or taken any action understood to be inconsistent with the continuance of such arrangement or understanding; and the execution, delivery, and performance of this Agreement and the satisfaction of the conditions to the Closing will not prejudice any such arrangement or understanding or any sale or purchase agreement in any way. Each of BRZ and SRC enjoys peaceful and undisturbed possession under all leases and licenses under which it is operating. Neither BRZ nor SRC has engaged within the last two years in, is engaging in, or intends to engage in any transaction with, the Parent, any director, officer, or employee of the Parent, BRZ, or SRC, or any person owning directly or

indirectly any interest in the Parent, BRZ, or SRC, or any affiliate of any of the foregoing (except as listed in Schedule 1.09 and employment and compensation arrangements described in Schedule 1.10 (a)). Schedule 1.09 accurately and completely sets forth the information required to be contained therein. The stock ledgers and stock transfer books and the minute book records of BRZ and SRC relating to all issuances and transfers of stock by BRZ and SRC and all proceedings of the stockholders and the Boards of Directors and committees thereof of BRZ and SRC since their respective incorporations that have been made available to the Purchaser's counsel are the original stock ledgers and stock transfer books and minute book records of BRZ and SRC or exact copies thereof. Neither BRZ nor SRC is in violation or breach of, or in default with respect to, any term of its certificate of incorporation (or other charter document) or by-laws.

§1.10 *Employees*

(a) Schedule 1.10(a) contains a true and complete list of all "employee benefit plans," within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and any other bonus, profit sharing, compensation, pension, severance, deferred compensation, fringe benefit, insurance, welfare, medical, post-retirement health or welfare benefit, medical reimbursement, health, life, stock option, stock purchase, tuition refund, service award, company car, scholarship, relocation, disability, accident, sick pay, sick leave, vacation, termination, individual employment, executive compensation, incentive, bonus, commission, payroll practices, retention, or other plan, agreement, policy, trust fund, or arrangement (whether written or unwritten), maintained, sponsored, or contributed to by BRZ or any entity that would be deemed a "single employer" with BRZ under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA (an "ERISA Affiliate") on behalf of any employee of BRZ (whether current, former,

or retired) or their beneficiaries or with respect to which BRZ or any ERISA Affiliate has or has had any obligation on behalf of any such employee or beneficiary (each, a "Plan," and, collectively, the "Plans"). With respect to each Plan, true and complete copies of (i) the documents embodying and relating to the Plan, including, without limitation, the Plan document(s), all amendments, investment management agreements, administrative service contracts, insurance contracts, collective bargaining agreements, written summaries of any unwritten Plan, the most recent summary plan descriptions with each summary of material modification (if applicable), and employee handbook(s), (ii) annual reports for the last three years, (iii) actuarial valuation reports and financial statements for the last three years, and (iv) each material communication received by BRZ or any ERISA Affiliate from the Internal Revenue Service ("IRS"), U.S. Department of Labor ("DOL"), or any other governmental authority, including, without limitation, the most recent determination letter received from the IRS, have been delivered to the Purchaser.

(b) None of the ERISA Affiliates, BRZ, or any of their respective predecessors has ever contributed to or contributes to, or otherwise participated in or participates in on behalf of employees of BRZ, any "multiemployer plan" (within the meaning of Section 4001(a)(3) of ERISA or Section 414(f) of the Code) or any single employer pension plan (within the meaning of Section 4001(a)(15) of ERISA) subject to Sections 4063 and 4064 of ERISA.

(c) Neither BRZ nor SRC is or will be liable for any liability of any ERISA Affiliate (including predecessors) with regard to any employee benefit plan, including, without limitation, withdrawal liability, liabilities to the PBGC (other than for required premium payments), or liabilities under Section 412 of the Code or Section 302(a)(2) of ERISA. All premiums due to the PBGC by BRZ or any ERISA Affiliate have been paid on a timely basis. BRZ, each ERISA Affiliate, and each "plan administrator" (within the meaning of

Section 3(16) of ERISA) of each "welfare benefit plan" (within the meaning of Section 3(1) of ERISA) has complied in all respects with the requirements of Section 4980B of the Code and Title I, Subtitle B, Part 6 of ERISA.

(d) With respect to each Plan:

(i) each Plan intended to qualify under Section 401(a) of the Code has been qualified since its inception and has received a determination letter from the IRS to the effect that the Plan is qualified under Section 401 of the Code and any trust maintained pursuant thereto is exempt from federal income taxation under Section 501 of the Code and nothing has occurred (since the effective date of the Plan reflected in the determination letter) or will occur through the Closing Date (including, without limitation, the transactions contemplated by this Agreement) that caused or could cause the loss of such qualification or exemption or the imposition of any penalty or tax liability; BRZ or an ERISA Affiliate, as the case may be, has applied, or prior to the end of the remedial amendment period, as defined under Treasury Regulation Section 1.401(b) and as modified by IRS pronouncements, will apply, for a determination letter from the IRS, pursuant to Revenue Procedure 93-39, for each Plan intended to qualify under Section 401(a) of the Code;

(ii) all payments required by any Plan, any collective bargaining agreement, or by law (including all contributions, insurance premiums, or intercompany charges) with respect to all periods through the Closing Date shall have been made or accrued prior to the Closing;

(iii) no claim, lawsuit, arbitration, or other action has been threatened, asserted, instituted, or anticipated against the Plans, any trustee or fiduciaries thereof, BRZ, or any ERISA Affiliate, any director, officer, or employee thereof, or any assets of any trust or the Plans other than routine claims for benefits;

(iv) all amendments required to bring the Plans into conformity with applicable law, including, without limitation, ERISA and the Code, have been duly adopted;

(v) each Plan complies and has been maintained and operated in accordance with its terms and applicable law, including, without limitation, ERISA and the Code;

(vi) no "prohibited transaction," within the meaning of Section 4975 of the Code and Section 406 of ERISA, has occurred or is expected to occur with respect to the Plan (and the transactions contemplated by this Agreement will not constitute or directly or indirectly result in a prohibited transaction) that has subjected or could subject BRZ, any officer, director, or employee thereof, or any trustee, administrator, or other fiduciary, to a tax or penalty on prohibited transactions imposed by Section 502 of ERISA or Section 4975 of the Code, or any other liability with respect thereto;

(vii) no Plan is under audit or investigation by the IRS, the DOL or any other governmental authority and no such completed audit, if any, has resulted in the imposition of any tax or penalty;

(viii) no Plan is subject to Section 412 of the Code, Section 302 of ERISA, or Title IV of ERISA;

(ix) each Plan intended to meet requirements for tax-favored treatment under Section 79, 106, 117, 120, 125, 127, 129, or 132 of the Code satisfies the applicable requirements under the Code; and

(x) with respect to each Plan that is funded mostly or partially through an insurance policy, neither BRZ nor any ERISA Affiliate has any liability in the nature of retroactive rate adjustment, or loss-sharing arrangement, or other actual or

contingent liability with respect to such Plan arising wholly or partially out of events occurring on or before the Closing Date.

(e) Except as set forth on Schedule 1.10(e), the consummation of the transactions contemplated by this Agreement will not give rise to any liability, including, without limitation, liability for severance pay, unemployment compensation, termination pay, or withdrawal liability, or accelerate the time of payment or vesting or increase the amount of compensation or benefits due to any current, former, or retired employee or their beneficiaries solely by reason of such transactions.

(f) Except as set forth on Schedule 1.10(f), or as required under §4980B of the Code, neither BRZ nor any ERISA Affiliate provides or is required to provide post-termination or post-retirement welfare benefits for any employees, former employees, or current or future retirees of BRZ. Except as set forth on Schedule 1.10(f), any Plan that provides post-termination or post-retirement welfare benefits for any employees, former employees or current or future retirees may be terminated at any time without liability to the Purchaser.

(g) Neither BRZ nor any ERISA Affiliate, nor any officer or employee thereof, has made any promises or commitments, whether or not legally binding, to create any additional plan, agreement, or arrangement, or to modify or change any existing Plan.

(h) Schedule 1.10(h)(i) contains a true and correct statement of the names, relationships with BRZ present rates of compensation (whether in the form of salary, bonuses, commissions, or other supplemental compensation now or hereafter payable), and aggregate compensation for the fiscal year ended December 31, 1994 of (i) each director, officer, or other employee of BRZ whose aggregate compensation for the fiscal year ended December 31, 1994 exceeded \$100,000 or whose aggregate compensation presently exceeds the rate of \$100,000 per annum, and (ii) all sales agents, dealers, or distributors of BRZ. Except as

set forth on Schedule 1.10(h)(ii), since December 31, 1994, BRZ has not changed the rate of compensation of such directors, officers, employees, agents, dealers, or distributors, nor has any Plan or program been instituted or amended to increase benefits thereunder. SRC does not now have and has never had any employees.

§1.11 *Patents, Trademarks, Copyrights*

Neither BRZ nor SRC owns or has pending, or is licensed under, any patent, patent application, trademark, trademark application, trade name, service mark, or copyright (all of the foregoing being herein called "Intangibles"), other than as described in Schedule 1.11, all of which are in good standing and uncontested. No Intangible other than the Intangibles described in Schedule 1.11 is required to conduct the business of BRZ or SRC substantially in the manner as currently conducted. Schedule 1.11 accurately sets forth with respect to Intangibles licensed by BRZ or SRC from or to a third party a description of such license. Neither BRZ nor SRC has infringed, is infringing, or has received notice of infringement either orally or in writing with regard to any asserted Intangibles of others. Neither BRZ nor SRC has misappropriated or misused, is misappropriating or misusing, or has received notice of misappropriation or misuse of any invention, trade secret or other proprietary information entitled to legal protection. To the knowledge of BRZ, SRC, or the Parent, there is no infringement by others of Intangibles of BRZ or SRC. Neither BRZ nor SRC has asserted any currently outstanding claim of infringement, misappropriation, or misuse of any Intangible during the last five years. BRZ and SRC have taken all reasonable security measures to protect the secrecy, confidentiality, value, and protectability (as a "trade secret") of its trade secrets.

§1.12 *Authority to Sell*

Each of BRZ, SRC, and the Parent has all requisite power and authority to execute, deliver, and perform this Agreement. All necessary corporate proceedings of each of BRZ, SRC, and the Parent (including action by stockholders) have been duly taken to authorize the execution, delivery, and performance of this Agreement by them. This Agreement has been duly authorized, executed, and delivered by each of BRZ, SRC, and the Parent, constitutes the legal, valid, and binding obligation of each of them, and is enforceable as to each of them in accordance with its terms (except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditor's rights generally or by equitable principles). Except as set forth in Schedule 1.12, no consent, authorization, approval, order, license, certificate, or permit of or from, or declaration or filing with, any federal, state, local, or other governmental authority or any court or other tribunal is required by BRZ, SRC, or the Parent for the execution, delivery, and performance of this Agreement by each of them other than any matter that would arise as a result of the identity of the Purchaser. No consent of any party to any contract, agreement, instrument, lease, license, arrangement, or understanding to which BRZ, SRC, or the Parent is a party, or to which it or its respective businesses, properties, or assets are subject, is required for the execution, delivery, or performance of this Agreement (except such consents referred to in Section 1.12); and the execution, delivery, and performance of this Agreement will not (if the consents referred to in Section 1.12 are obtained prior to the Closing Date) violate, result in a breach of, conflict with, or entitle any party to terminate or call a default under, entitle any party to rights and privileges that such party was not entitled to receive immediately before this Agreement was executed under, or create any obligation on the part of BRZ or SRC that it was not obligated to pay immediately before this Agreement was executed under, any term of such contract, agreement, instrument, lease, license,

arrangement, or understanding, or result in a breach of any term of the certificate of incorporation (or other charter document) or by-laws of the Parent, BRZ, or SRC, or violate, result in a breach of, or conflict with any law, rule, regulation, order, judgment, or decree binding on BRZ, SRC, or the Parent or to which it or any of its business, properties, or assets are subject. Upon the Closing, the Purchaser will receive good title to all the Assets (as defined in Section 3.01) of BRZ and SRC, free and clear of all liens, mortgages, security interests, pledges, charges, and encumbrances, except for any Permitted Liens.

§1.13 *Environmental Protection*

(a) Except as set forth in Schedule 1.13(a)(A), BRZ and SRC are in compliance with all federal, state, and local environmental protection and health and safety laws and regulations, including, without limitation, the Occupational Safety and Health Act of 1970 ("Environmental Laws").

(b) Except as set forth in Schedule 1.13(b)(B), BRZ and SRC have obtained all permits, licenses, and other governmental authorizations that are required to be obtained pursuant to the Environmental Laws ("Permits") to own and operate their businesses. Except as set forth in Schedule 1.13(b)(C), BRZ and SRC are in compliance with the terms and conditions of each Permit and any consent, order, or other governmental directive to which BRZ or SRC is subject under the Environmental Laws ("Directives"). Schedule 1.13(b)(D) contains a complete list of all Permits and Directives currently in effect with respect to BRZ and SRC.

(c) Schedule 1.13(c)(E) contains a complete list of the names and locations of all the sites listed, or proposed for listing, on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or any state inventory of inactive hazardous waste sites (i) currently or formerly owned, leased, or

used for manufacturing or the storage or disposal of materials by BRZ, SRC, or their predecessor companies ("Sites"), or (ii) with respect to which BRZ or SRC has received notice that it is considered to be a potentially responsible person.

(d) Except as set forth in Schedule 1.13(d)(F), neither BRZ, nor SRC, nor any of their predecessor companies has caused or permitted to exist a disposal, discharge, or release on or from any Sites of solid wastes, pollutants, or hazardous substances, as such terms are defined by the Environmental Laws, unless the disposal, discharge, or release was pursuant to and in compliance with the conditions of a Permit or Directive.

(e) Except as set forth in Schedule 1.13(e)(G), the real properties now owned, leased, or occupied and controlled pursuant to a lease, license, easement, or similar agreement for manufacturing or the storage or disposal of materials by BRZ or SRC ("Premises") do not contain any underground storage tanks, asbestos-containing material or polychlorinated biphenyls, as such terms are defined by the Environmental Laws.

(f) Except as set forth in Schedule 1.13(f)(H), the Premises do not contain any (i) open dumps or sanitary landfills, i.e. sites where discarded or abandoned materials have been or are being placed upon land; (ii) facility for the treatment, storage or disposal of hazardous waste, i.e. tank systems, surface impoundments, drum storage areas, incinerators, land treatment areas, bioreactors, injection wells, leach fields or waste piles where hazardous wastes are stored for more than 90 days or subjected to any method, technique or process designed to change their physical, chemical or biological form, character or composition; (iii) solid waste management unit where corrective action is necessary to protect human health and the environment as a result of releases of hazardous waste or constituents from a place on the Premises from where the same was stored, treated or disposed of; or (iv) any corrective action management units designated by the U.S. Environmental Protection Agency and/or

Illinois EPA for the management of remediation wastes arising from the implementation of corrective action requirements at the Premises.

(g) Except as set forth in Schedule 1.13(g)(I), there is no claim, lawsuit, or administrative proceeding pending, or to the knowledge of BRZ, SRC, or the Parent threatened, against BRZ or SRC (i) alleging non-compliance with Environmental Laws or any Permit or Directive; (ii) demanding damages based upon alleged personal injury, property damage, or natural resources damage arising from a disposal, discharge, or release of solid wastes, pollutants, or hazardous substances or exposure thereto; or (iii) demanding removal of or remedial action with respect to solid wastes, pollutants, or hazardous substances.

§1.14 *Customers and Suppliers*

(a) Schedule 1.14(a)(A) sets forth a list of BRZ's fifteen largest customers (including the addresses, phone numbers, and names of contact persons at such customers) by order of dollar volume of sales during its last two fiscal years and for the period from January 1, 1995 through April 30, 1995, showing the approximate total sales in dollars and product description of sales by BRZ to each such customer during each such period.

(b) Schedule 1.14(b)(B) sets forth a list of BRZ's fifteen largest suppliers (including the address, phone numbers, and names of contact persons at such supplier) by order of dollar volume of purchases during its last two fiscal years and for the period from January 1, 1995 through April 30, 1995, showing the approximate total purchases in dollars and product description of purchases by BRZ from each such supplier during each such period.

(c) Except as set forth on Schedule 1.14(c)(C):

(i) There has not been any adverse change and there are no facts known to BRZ or the Parent that may reasonably be expected to indicate that any adverse

change may occur in the business relationship of BRZ with any customer or supplier named on Schedule 1.14(a)(A) or Schedule 1.14(b)(B).

(ii) Neither the Parent nor BRZ is engaged in any disputes with customers or suppliers relating to the business of BRZ, and the Parent and BRZ have no reason to believe that any customer or supplier intends to discontinue or adversely modify its relationship with BRZ after the Closing. In addition, the Parent and BRZ have no knowledge that any customer named in Schedule 1.14(a)(A) is dissatisfied with the products of BRZ in any material respect.

§1.15 *Insurance*

The Parent presently maintains liability (including, but not limited to, product liability) insurance coverage with respect to BRZ and SRC with a per occurrence limit of no less than \$6,000,000 and with an aggregate limit of no less than \$7,000,000. All insurance policies relating to BRZ or SRC are listed in Schedule 1.15, and copies of all insurance policies related thereto have been previously delivered to the Purchaser. All such insurance policies are in full force and effect, no notice of cancellation with respect thereto has been received, and there is no existing default or event that, with the giving of notice or lapse of time or both, would constitute a default, thereunder. Neither BRZ nor SRC has been refused any insurance and its coverage has not been limited by any insurance carrier to which it or the Parent has applied for insurance during the past two years. Except as set forth in Schedule 1.15, the Parent, BRZ, and SRC know of no reason why any of such insurance policies will be terminated, suspended, modified, or amended, or not renewed on terms substantially similar to the current terms (giving due consideration to the market and other conditions outside of the control of the Parent, BRZ, or SRC).

§1.16 *Materials*

BRZ has not been unable to obtain any raw materials necessary to the operation of the business of BRZ substantially as currently operated and neither the Parent nor BRZ knows of any reason why the Purchaser would be unable to obtain such raw materials or inventory after the Closing.

II. *Representations and Warranties of the Purchaser*

The Purchaser represents and warrants to the Parent as follows:

§2.01 *Organization*

The Purchaser is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation, with all requisite power and authority, and all consents, authorizations, approvals, orders, licenses, certificates, and permits of and from, and declarations and filings with, all federal, state, local, and other governmental authorities and all courts and tribunals, to own, lease, license, and use its properties and assets and to carry on the business in which it is now engaged and the business in which it contemplates engaging.

§2.02 *Authority to Buy*

The Purchaser has all requisite power and authority to execute, deliver, and perform this Agreement. All necessary corporate proceedings of the Purchaser have been duly taken to authorize the execution, delivery, and performance of this Agreement by the Purchaser. This Agreement has been duly authorized, executed, and delivered by the Purchaser, is the legal, valid, and binding obligation of the Purchaser, and is enforceable as to the Purchaser in accordance with its terms (except as the enforceability thereof may be limited

by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditor's rights generally or by equitable principles). Except as set forth in Schedule 2.02, no consent, authorization, approval, order, license, certificate, or authorization, or permit of or from, or declaration or filing with, any federal, state, local, or other government authority or any court or other tribunal is required by the Purchaser for the execution, delivery, and performance of this Agreement. No consent of any party to any contract, agreement, instrument, lease, license, arrangement, or understanding to which the Purchaser, or to which it or its businesses, properties or assets is subject, is required for the execution, delivery, or performance of this Agreement (except such consents referred to in this Section 2.02); and the execution, delivery, and performance of this Agreement will not (if the consents referred to in this Section 2.02 are obtained prior to the Closing Date) violate, result in a breach of, conflict with, or entitle any party to terminate or call a default, under, or entitle any party to rights and privileges that such party was not entitled to immediately before this Agreement was executed under, or create any obligation on the part of the Purchaser that it was not obligated to pay immediately before this Agreement was executed under, any term of such contract, agreement, instrument, lease, license, arrangement, or understanding, or result in a breach of any term of the certificate of incorporation (or other charter document) or by-laws of the Purchaser or violate, result in a breach of, or conflict with any rule, law, regulation, order, judgment, or decree binding on the Purchaser or to which it or any of its business, properties or assets are subject.

§2.03 Financing; No Other Representation

(a) The Purchaser has, or will have prior to the Closing, sufficient cash, available lines of credit, or other sources of immediately available funds to enable it to

make payment of the purchase price and any other amounts to be paid by it under this Agreement.

(b) The Purchaser acknowledges that it is acquiring the Assets without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to the Parent, BRZ, or SRC, except as expressly set forth in this Agreement.

§2.04 *Litigation*

There is no litigation, arbitration, claim, governmental or other proceeding (formal or informal), or investigation pending or, to the knowledge of the Purchaser threatened (or any valid basis therefor known to the Purchaser) with respect to the Purchaser or any of its businesses, properties, or assets.

III. *The Exchange*

§3.01 *Terms of the Exchange*

On the basis of the representations, warranties, covenants, and agreements in this Agreement and subject to the terms and conditions of this Agreement:

(a) Each of BRZ and SRC shall, and the Parent shall cause each of them to, sell, assign, transfer, and convey as a going concern to the Purchaser at the Closing all the properties and assets of BRZ and SRC, respectively, of every kind and nature, including the receivables, business, goodwill, leases, leasehold improvements, contract rights, licenses, customer lists, catalogs, brochures, mailing lists, advertising materials, customer sales orders, trademarks, tradenames, other intangible assets, books, records, and files (the "Assets"), free and clear of all liens, mortgages, security interests,

pledges, charges, and encumbrances, except such as are listed in Schedule 1.08 and except for Permitted Liens, and except that the Assets shall not include any of the assets listed in Schedule 3.01(a) (the "Excluded Assets"), which shall be retained by BRZ or SRC, as the case may be, and shall not be sold, transferred, or conveyed to the Purchaser.

(b) In consideration for the Assets referred to in Section 3.01(a), the Purchaser shall (i) deliver at the Closing to BRZ and SRC \$52,500,000, subject to reduction and adjustment under Section 3.02, by wire transfer to an account specified by the Parent and communicated to the Purchaser in writing at least five business days before the Closing, \$52,352,000 of which shall be allocated to BRZ and \$148,000 of which shall be allocated to SRC, and (ii) assume effective as of the Closing all debts, obligations, contracts, and liabilities of BRZ and SRC of any kind, character, or description whether known or unknown, accrued, absolute, contingent, or otherwise, except for the following (the "Excluded Liabilities"): (A) any liability or obligation of the Parent, BRZ, or SRC to the Purchaser under this Agreement, (B) any liability or obligation for any Taxes of the Parent, BRZ, or SRC, or any of their affiliates, (C) any liability or obligation owing to Zore, Inc. or any its affiliates, officers, directors, employees, or agents arising out of (x) the business, transactions, or operations of BRZ or any of its affiliates, officers, directors, employees, or agents at or before the Closing, (including, but not limited to, any liability, obligation or cause of action arising out of, based upon, or in connection with, or related to the lawsuits described on Schedule 1.07), or (y) the execution, delivery, or performance of this Agreement, (D) any liability or obligation under any Plan other than the Assumed Plans (as defined in Section 7.04), except as provided in Section 7.04 or for any liability or obligation of the type that would be reflected on the Final Statement (as defined in Section 3.02(b)), (E) any

liability or obligation for indebtedness for borrowed money (other than the indebtedness set forth on Exhibit 3.01(b)), and any guarantee or similar obligation in respect of any liability or obligation of the Parent and its other affiliates, (F) any tax or similar liability or obligation arising out of or based upon the transactions contemplated by this Agreement, and (G) any liability or obligation of BRZ or SRC to the Parent or any affiliate of the Parent or any of their respective investment bankers, counsel, accountants, advisors, insurance companies, consultants, officers, directors, employees, and agents.

(c) The Purchaser shall not assume or be responsible for any of the Excluded Liabilities.

(d) The consideration paid by the Purchaser shall be allocated among the Assets for federal, state, and local Tax purposes by the Parent and the Purchaser as determined by the Purchaser and presented to the Parent, in accordance with Section 1060 of the Code, not later than 90 days from the Closing Date but in any event not later than 15 days prior to the date any party is obligated to file its original Tax Return including such allocation, not including any extensions of time with respect thereto. For all pertinent Tax purposes, the Purchaser and the Parent shall each report the purchase and sale of the Assets on a basis consistent with such allocation, and the Purchaser and the Parent agree not to take a position inconsistent with such allocation. The Parent and the Purchaser each shall, after the Closing, timely file Form 8594 with the IRS setting forth this allocation, including a supplemental filing, if necessary, upon a purchase price adjustment in accordance with Section 3.02. The consideration shall be allocated among the assets of each of BRZ and SRC and the covenant not to compete (as described in Section 6.07) in an agreement to be negotiated in good faith between the Parent and the Purchaser prior to the Closing Date. If there is any

dispute between the parties regarding such allocations, the Parent and the Purchaser shall negotiate in good faith and exercise their best efforts to resolve such dispute. If the parties fail to resolve their dispute within the period ending thirty (30) days prior to the Closing Date (as estimated in good faith by the Purchaser), the dispute shall be referred to the Tax Arbitrator. Each of the Parent and the Purchaser shall present its position to the Tax Arbitrator, which shall decide which position should be adopted no later than ten (10) days before the estimated Closing Date. The Tax Arbitrator shall not be entitled to adopt any other position, unless the Parent and the Purchaser so agree in writing. The decision of the Tax Arbitrator shall be final, binding and conclusive, and its fees and costs shall be paid half by the Parent and half by the Purchaser.

(e) With respect to any Assets sold hereunder that cannot be physically delivered to the Purchaser because they are in the possession of third parties, or otherwise, the Parent, BRZ, and SRC shall give irrevocable instructions to the party in possession thereof, with copies to the Purchaser, that all right, title, and interest therein have vested in the Purchaser and that the same are to be held for the Purchaser's exclusive use and benefit.

(f) To the extent that the assignment by BRZ or SRC to the Purchaser of any contract, agreement, lease, license, instrument, understanding, or arrangement to be assigned to the Purchaser hereunder requires the consent of a party other than the Parent, BRZ, or SRC that has not been obtained by the Closing, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment without such consent would constitute a breach thereof. The Parent and the Purchaser shall use their reasonable best efforts (but without any payment of money by the Parent or the Purchaser) to obtain any consent necessary for the assignment of the Assets (including, without limitation, any contract, agreement, lien, license, lease, or

instrument) to the Purchaser. If any such consent is not obtained, or if an attempted assignment thereof would be ineffective so that the Purchaser would not in fact receive all the rights under and assume all of the obligations relating to any such Asset, the Parent and the Purchaser shall cooperate in a mutually agreeable arrangement pursuant to which the Purchaser would obtain the benefits and assume the obligations under such Asset in accordance with this Agreement, including sub-contracting, sub-licensing, or sub-leasing to the Purchaser or under which BRZ or SRC would enforce for the benefit of the Purchaser, with the Purchaser assuming BRZ's or SRC's obligations and any and all rights of BRZ or SRC against a third party thereto. The Parent shall bear any costs associated with obtaining any such consent or the preparation of any such agreement. The Parent shall promptly pay to the Purchaser when received all monies received by BRZ or SRC under any such Asset or any claim or right or any benefit arising thereunder.

§3.02 Reduction of Purchase Price; Adjustment of Purchase Price and Payment of Adjustment

(a) The purchase price shall be adjusted as follows:

(i) If \$10,725,000 (the "Base Amount") exceeds the Final Net Adjusted Asset Amount, the purchase price shall be reduced by an amount equal to that excess.

(ii) If the Final Net Adjusted Asset Amount exceeds the Base Amount, the purchase price shall be increased by an amount equal to that excess.

(b) The "Net Adjusted Asset Amount" shall equal the total current assets reduced by (i) the total current liabilities, (ii) any long-term debt for money borrowed,

and (iii) all other long-term liabilities of BRZ and SRC (including, without limitation, the \$182,000 listed in Exhibit 3.01(b)) as of the Closing (the "Determination Time"). The Net Adjusted Asset Amount shall be determined on the basis of a combined statement of such assets and liabilities assumed by the Purchaser hereunder of BRZ and SRC as of the Determination Time (the "Final Statement"). The Final Statement shall be prepared by the Purchaser in accordance with generally accepted accounting principles and with principles consistent with those required to be used in the preparation of the December 31, 1994 and April 30, 1995 balance sheets referred to in Section 1.05 and otherwise in accordance with the principles and procedures set forth in Schedule 3.02(b), adjusted to reflect the transactions effected at or before the Closing. The Final Statement shall be audited by Coopers & Lybrand L.L.P. The Purchaser shall pay the fees of Coopers & Lybrand L.L.P.

(c) The Purchaser shall engage Coopers & Lybrand L.L.P. to audit the Final Statement and shall use all reasonable efforts to deliver, or cause to be delivered, to the Parent the Final Statement as promptly as practicable, but no later than 60 days, after the Closing, together with a report of Coopers & Lybrand L.L.P. thereon: (i) setting forth the Net Adjusted Asset Amount reflected in the Final Statement; (ii) stating that (A) the audit has been made in accordance with generally accepted auditing standards and (B) the Final Statement has been prepared in accordance with this Section 3.02; and (iii) setting forth the amount of any required adjustment to the purchase price under this Section 3.02.

(d) If the Parent disagrees with the Purchaser's calculation of the Net Adjusted Asset Amount delivered pursuant to Section 3.02(c), the Parent may, within 30 days after delivery of the Final Statement, deliver a notice to the Purchaser disagreeing with such calculation and setting forth the Parent's calculation of such

amount. Any such notice of disagreement shall specify those items or amounts as to which the Parent disagrees, and the Parent shall be deemed to have agreed with all other items and amounts contained in the Final Statement and the calculation of the Net Adjusted Asset Amount pursuant to Section 3.02(b).

(e) If a notice of disagreement shall be delivered pursuant to Section 3.02(d), the Parent and the Purchaser shall, during the 30 days following such delivery, use their best efforts to reach agreement on the disputed items or amounts in order to determine, as may be required, the amount of the Net Adjusted Asset Amount, which amount shall not be more than the amount thereof shown in the Parent's calculations delivered pursuant to Section 3.02(d) nor less than the amount thereof shown in the Purchaser's calculation delivered pursuant to Section 3.02(c). If, during such period, the Parent and the Purchaser are unable to reach such agreement, they shall promptly thereafter cause Price Waterhouse LLP, St. Louis office (the "Independent Auditor"), promptly to review this Agreement and the disputed items or amounts for the purpose of calculating the Net Adjusted Asset Amount. In making such calculation, the Independent Auditor shall consider only those items or amounts in the Final Statement or the Purchaser's calculation of the Net Adjusted Asset Amount as to which the Parent has disagreed. The Independent Auditor shall deliver to the Purchaser and the Parent, as promptly as practicable, a report setting forth such calculation. Such report shall be final and binding upon the Purchaser and the Parent. The cost of such review and report shall be borne by the party whose calculations are more at variance with the decision of the Independent Auditor.

"Final Net Adjusted Asset Amount" means the Net Adjusted Asset Amount

(i) as shown in the Purchaser's calculation delivered pursuant to Section 3.02(c), if no notice of disagreement with respect thereto is duly delivered pursuant to Section 3.02(d) or (ii) if such a

notice of disagreement is delivered, (A) as agreed by the Parent and the Purchaser pursuant to Section 3.02(e) or (B) in the absence of such agreement, as shown in the Independent Auditor's calculation delivered pursuant to Section 3.02(e); provided that, in no event shall the Final Net Adjusted Asset Amount be more than Parent's calculation of the Net Adjusted Asset Amount or less than Purchaser's calculation of the Net Adjusted Asset Amount.

(f) The parties agree that they will, and agree to cause their respective independent accountants and BRZ and SRC to, cooperate and assist in the preparation of the Final Statement and the calculation of the Net Adjusted Asset Amount in the conduct of the audits and reviews referred to in this Section 3.02, including without limitation the making available to the extent necessary of books, records, work papers, and personnel.

(g) If the Closing Date is within 90 days of the date this Agreement is executed and delivered, the purchase price shall be reduced by \$900,000. If the Closing Date is within 120 days of the date this Agreement is executed and delivered but not within 90 days of the date this Agreement is executed and delivered, the purchase price shall be reduced by \$750,000. If the Closing Date is delayed as a result of any breach of this Agreement by the Parent, there shall not be included in the number of days referred to in the two preceding sentences any day of delay resulting from any such breach.

§3.03 *Payment of Adjustment*

Within 10 days after the determination of the Final Net Adjusted Asset Amount, (i) the Parent shall, or shall cause BRZ or SRC to, pay the Purchaser the amount, if any, by which the Base Amount exceeds the Final Net Adjusted Asset Amount, or (ii) the Purchaser shall pay the Parent the amount, if any, by which the Final Net Adjusted Asset Amount exceeds the Base Amount. Any payment under this Section 3.03 shall be made by wire transfer of immediately available funds to an account previously designated by the payee to

the payor by notice given in writing and shall be accompanied by payment of an amount in the nature of simple interest at a rate of 6% a year on the amount of that payment from the Closing Date to the date payment is made; provided that any overdue payments shall accrue simple interest at a rate of 8%.

At the Closing, (a) the Purchaser and the Parent shall execute and deliver an escrow agreement substantially in the form of Schedule 3.03 (the "Escrow Agreement"), and will cause the Escrow Agent referred to therein to execute and deliver the Escrow Agreement and (b) the Parent shall transfer an amount equal to \$2,145,000 to the Escrow Agent to be held in accordance with the Escrow Agreement (such \$2,145,000, as well as all additional amounts paid to the Escrow Agent pursuant to the Agreement (as defined in Section 8.19), in whatever form invested and reinvested, together with all interest and other payments made thereon and all proceeds therefrom or thereof, is hereinafter referred to as the "Escrow Fund").

If within ten days after the determination of the Final Net Adjusted Asset Amount the Parent has not paid the Purchaser the amount, if any, by which the Base Amount exceeds the Final Net Adjusted Asset Amount and the amount in the nature of interest thereon referred to above (the "Excess Amount"), the Purchaser shall provide the Escrow Agent with instructions to deliver to the Purchaser that portion of the Escrow Fund equal to the Excess Amount. The Purchaser shall deliver a copy of the instructions to the Parent promptly after it delivers the instructions to the Escrow Agent. The Parent's liability to pay the Excess Amount pursuant to Section 3.03 shall not be limited to the Escrow Fund if the Excess Amount is greater than the Escrow Fund and the Purchaser shall be entitled to bring an action against the Parent to recover such excess.

§3.04 *Transactions at the Closing*

The following transactions shall take place at the Closing:

(a) The Parent, BRZ, and SRC shall deliver, or cause to be delivered, to the Purchaser all such warranty or other deeds, bills of sale, endorsements, assignments, evidences of consent, and certificates representing all other instruments or documents as the parties and their counsel deem reasonably necessary or desirable to evidence or perfect the sale, assignment, transfer, and conveyance contemplated hereunder. The Parent, BRZ, and SRC also shall deliver, or cause to be delivered, to the Purchaser all books and records of BRZ and SRC (except stock ledgers and stock transfer books, which shall be available for inspection by the Purchaser).

(b) The Purchaser shall deliver to the Parent \$52,500,000, subject to adjustment under Section 3.06, by wire transfer to an account specified by the Parent.

(c) The Purchaser shall deliver to the Parent an instrument of assumption of the liabilities and obligations of BRZ and SRC that the Purchaser has agreed to assume pursuant to Section 3.01(b)(ii), substantially in the form of Schedule 3.04(c).

§3.05 *The Closing*

The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Proskauer Rose Goetz & Mendelsohn LLP, 1585 Broadway, New York, New York 10036, at 9:00 A.M., local time, as soon as practicable, but no later than the tenth business day, after the conditions in Articles IV and V have been satisfied or waived, or on such other date or such other place as the Purchaser and the Parent may agree in writing (the "Closing Date").

§3.06 *Payment of Expenses*

The expenses, including the fees and disbursements of counsel to the Purchaser, relating to the analysis, negotiation, and documentation of the conversion referred to in Section 8.17 of the Stock Purchase Agreement dated July 27, 1995 between the Purchaser and the Parent (the "Stock Purchase Agreement") up to the date of this Agreement, up to a maximum of \$25,000, and all other amounts payable under Section 6.11 that arise prior to the Closing (except amounts payable in respect of litigation and threatened litigation) shall be offset against the purchase price at the Closing. Prior to the Closing, the Purchaser shall deliver to the Parent documentation in reasonable detail establishing such expenses.

IV. *Conditions to Obligations of the Purchaser*

The obligations of the Purchaser under this Agreement to consummate the transactions contemplated hereby at the Closing shall be subject to the satisfaction, at or prior to the Closing, of all the following conditions, any one or more of which may be waived in writing by the Purchaser:

§4.01 *Accuracy of Representations and Compliance with Conditions*

All representations and warranties of the Parent, BRZ, and SRC in this Agreement shall be accurate as of the Closing as if made at and as of such date, except that those representations and warranties which by their terms refer to an earlier date shall be accurate as of such earlier date, and the Parent, BRZ, and SRC shall have performed and complied with all covenants and agreements and satisfied all conditions required to be performed and complied with at or before such time by this Agreement, provided that this condition shall be deemed to be satisfied as to the accuracy of the Parent's, BRZ's, and SRC's representations and warranties and the performance by the Parent, BRZ, and SRC of their

covenants and agreements if all of the inaccuracies in such representations and warranties, together with all of the failures of performance of such covenants and agreements, have not had a Material Adverse Effect (as defined in the following sentence) on the date of or prior to the Closing, and could not reasonably be expected to have a Material Adverse Effect after the Closing. For purposes hereof, "Material Adverse Effect" means the incurrence of or suffering by the business of BRZ and SRC, taken as a whole, of the lesser of (a) damages, liabilities, losses, and expenses in the amount of 7.5% of the purchase price, and (b) a material adverse effect on the financial condition, business, or results of operations of the business of BRZ and SRC, taken as a whole.

§4.02 Certificate

The Purchaser shall have received a certificate executed by the chief executive officer and the chief financial officer of the Parent, dated the Closing Date, to the effect that the conditions set forth in Section 4.01 have been satisfied, substantially in the form of Schedule 4.02.

§4.03 Opinion of Counsel

The Parent shall have delivered to the Purchaser the opinions, dated the Closing Date, of Davis Polk & Wardwell, as counsel to the Parent, and Dwight A. Miller, General Counsel of the Parent, substantially in the form of Schedule 4.03.

§4.04 Other Closing Documents

The Parent, BRZ, and SRC shall have delivered to the Purchaser at or prior to the Closing such other documents as the Purchaser may reasonably request in order to enable

the Purchaser to determine whether the conditions to its obligations under this Agreement have been met and otherwise to carry out the provisions of this Agreement.

§4.05 Legal Action

There shall not have been instituted or threatened any legal proceeding relating to, or seeking to prohibit or otherwise challenge the consummation of, the transactions contemplated by this Agreement, or to obtain substantial damages with respect thereto, that has a reasonable possibility of being successful on its merits.

§4.06 No Governmental Action

There shall not have been any action taken, or any law, rule, regulation, order, or decree promulgated, enacted, entered, enforced, or deemed applicable to the transactions contemplated by this Agreement by any federal, state, local, or other governmental authority or by any court or other tribunal, including the entry of a preliminary or permanent injunction, that (i) makes any of the transactions contemplated by this Agreement illegal, (ii) requires the divestiture of a material portion of the business of Korea Zinc Co., Ltd. and its subsidiaries taken as a whole, or of the businesses and assets of BRZ and SRC taken as a whole, (iii) imposes material limitations on the ability of the Purchaser effectively to exercise full rights of ownership with respect to the Assets to be sold pursuant to this Agreement, or (iv) otherwise prohibits or restricts in any material manner consummation of any of the transactions contemplated by this Agreement.

§4.07 *Hart-Scott-Rodino Waiting Period*

All applicable waiting periods in respect of the transactions contemplated by this Agreement under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), shall have expired or been terminated.

§4.08 *Contractual Consents Needed*

The Parent, BRZ, or SRC shall have obtained all consents listed in Schedule 1.12 in form and substance reasonably satisfactory to the Purchaser; provided that the failure to so obtain any one or more of such consents shall not be deemed a failure of this condition unless such failure has or could reasonably be expected to have a Material Adverse Effect.

§4.09 *Title Insurance*

Prior to Closing, the Purchaser shall have received a title insurance commitment (the "Title Commitment") issued by Chicago Title Insurance Company (the "Title Company") and dated after the date hereof for the issuance of title insurance policies, ALTA Owners Policy of Title Insurance Form B-1987 (as amended 1990) (the "Title Policy") for the property owned by BRZ. The Title Commitment shall be in the amount of \$25,000,000, showing fee simple title to such property of BRZ, subject only to current real estate taxes not yet due and payable as of the Closing, liens and encumbrances reflected on Schedule 1.08 hereto, and such other covenants, conditions, easements and exceptions to title as the Purchaser may approve (collectively, the "Permitted Exceptions"). The Title Commitment and the Title Policy to be issued by the Title Company shall have all Standard and General Exceptions deleted so as to afford full "extended form coverage" and shall contain an ALTA zoning Endorsement 3.1, contiguity endorsement (if applicable), a location endorsement, and a survey endorsement. The cost of the Title Insurance Policy shall be paid for by the Parent. To the extent the

Purchaser desires to have the Title Insurance Commitment increased above \$25,000,000, the Purchaser shall bear the incremental cost for such increase. The Purchaser and the Title Company also shall have received prior to Closing an as-built plat of survey of the property owned by BRZ (the "Survey") prepared by a registered land surveyor or engineer, licensed in Illinois, dated as of a recent date, certified to BRZ and the Title Company, conforming to current ALTA Minimum Detail Requirements for Land Title Surveys, sufficient to cause the Title Company to delete the standard printed survey exception and showing no material encroachments or other material changes from the survey previously furnished to the Purchaser prepared by M.B. Corlew & Associates, Inc. dated July, 1972 under File No. A31.3(B). The Survey shall be prepared at the expense of the Parent. The Title Commitment shall incorporate a Survey reading to show new matters disclosed by the Survey.

§4.10 *Environmental Disclosure*

At least thirty (30) days prior to the Closing, the Parent shall deliver to the Purchaser, an Environmental Disclosure Document in compliance with the provisions of the Illinois Responsible Property Transfer Act of 1988, as amended ("IRPTA"). The disclosure document shall set forth information concerning the use of hazardous substances on the property of BRZ and SRC, any releases of those substances into the environment and any prior uses of the property which are environmentally active. Within thirty (30) days after the Closing, the Parent shall cause the environmental disclosure document to be recorded in the recorder's office of the county in which the property owned by BRZ and SRC is located and filed with the Illinois Environmental Protection Agency.

§4.11 *Personnel*

The individuals set forth in Schedule 4.11 shall at the Closing be actively engaged in the performance of their existing duties for BRZ and shall not have evidenced any intention not to engage in comparable employment with the Purchaser after the Closing.

§4.12 *Releases*

The Purchaser shall have received from the Parent, Saratoga Partners II, L.P., and Saratoga Partners II, C.V. a release, dated the Closing Date, releasing the Purchaser, Korea Zinc Co., Ltd., and their investment bankers, counsel, accountants, advisors, insurance companies, consultants, officers, directors, employees, and agents, and the successors, assigns, and personal representatives of the foregoing (the "Released Parties"), from certain liabilities substantially in the form of Schedule 4.12(a). The Purchaser shall have received from the officers and directors of BRZ and SRC a release, dated the Closing Date, releasing the Released Parties from certain liabilities, substantially in the form of Schedule 4.12(b).

§4.13 *Confidentiality Agreements*

The Purchaser shall have received from each officer and director of BRZ, SRC, and the Parent an agreement to keep confidential certain data, substantially in the form of Schedule 4.13.

§4.14 *Cyprus Amax Minerals Company Consent*

Cyprus Amax Minerals Company, as successor to Amax Inc., shall have executed an environmental indemnification agreement with the Purchaser, substantially in the form of Schedule 4.14 which shall be similar to the environmental indemnity that the Parent received from Amax Inc. pursuant to the Stock Purchase Agreement, dated July 15, 1988

between Amax Inc. and St. Joe Resources Corporation and the Environmental Indemnification Agreement, dated August 31, 1988 between Amax Inc. and the Parent.

§4.15 *Korean Government Approval*

The Purchaser shall have obtained the approvals of the Korean Ministry of Finance and Economy and the Bank of Korea to the transactions contemplated by this Agreement.

§4.16 *Affidavit*

The Purchaser shall have received on the Closing Date an affidavit executed by an officer of the Parent to the effect that the Parent is a U.S. person for federal income tax purposes.

§4.17 *Change of Name*

No later than the Closing Date, BRZ and SRC shall each have filed, or furnished the Purchaser for filing, a Certificate of Amendment to its Certificate of Incorporation changing its corporate name to a name not confusingly similar to either of their previous names and shall each have filed or furnished the Purchaser for filing, such certificates, documents, or other instruments as may be necessary to effect such change in each state in which it is qualified to do business.

§4.18 *Union Consent*

The Oil, Chemical and Atomic Workers International Union, AFL-CIO and its Local Union No. 7-347 (the "Union") shall have executed a consent, a true and correct copy of which has been furnished to the Purchaser, pursuant to which the Union has agreed to the

assignment to the Purchaser of the Agreement dated February 27, 1995 between the Union and BRZ.

§4.19 *Enforceability of Agreement*

The Agreement that the Purchaser shall have received pursuant to Section 8.19 shall be in full force and effect at the Closing.

§4.20 *Escrow Agreement; Funding of Escrow Fund*

The Escrow Agreement shall have been executed and delivered by the parties thereto and \$20 million (including the \$2.145 million referred to in Section 3.03) shall have been deposited in the Escrow Fund concurrently with the Closing.

V. *Conditions to the Obligations of the Parent, BRZ, and SRC*

The obligations of the Parent, BRZ, and SRC under this Agreement shall be subject to the satisfaction, at or prior to the Closing, of all the following conditions, any one or more of which may be waived in writing by the Parent:

§5.01 *Accuracy of Representations and Compliance with Conditions*

All representations and warranties of the Purchaser in this Agreement shall be accurate in all material respects as of the Closing as if made on such date, and the Purchaser shall have performed and complied in all material respects with all covenants and agreements, and satisfied all conditions required to be performed and complied with at or before such time by this Agreement.

§5.02 *Certificate*

The Parent shall have received a certificate executed by the chief executive officer and the chief financial officer of the Purchaser, dated the Closing Date, to the effect that the conditions set forth in Section 5.01 have been satisfied, substantially in the form of Schedule 5.02.

§5.03 *Opinion of Counsel*

The Purchaser shall have delivered to the Parent an opinion, dated the Closing Date, of Proskauer Rose Goetz & Mendelsohn LLP, as counsel to the Purchaser, substantially in the form of Schedule 5.03.

§5.04 *Other Closing Documents*

The Purchaser shall have delivered to the Parent such other documents as the Parent may reasonably request in order to enable the Parent to determine whether the conditions to its obligations under this Agreement have been met and otherwise to carry out the provisions of this Agreement.

§5.05 *Legal Action*

There shall not have been instituted or threatened any legal proceeding relating to, or seeking to prohibit or otherwise challenge the consummation of, the transactions contemplated by this Agreement, or to obtain substantial damages with respect thereto that has a reasonable possibility of being successful on its merits.

§5.06 *No Governmental Action*

There shall not have been any action taken, or any law, rule, regulation, order, or decree promulgated, enacted, entered, enforced, or deemed applicable to the transactions contemplated by this Agreement by any federal, state, local, or other governmental authority or by any court or other tribunal, including the entry of a preliminary or permanent injunction, that (i) makes any of the transactions contemplated by this Agreement illegal, or (ii) otherwise prohibits or restricts in any material manner consummation of any of the transactions contemplated by this Agreement.

§5.07 *Hart-Scott-Rodino Waiting Period*

All applicable waiting periods in respect of the transaction contemplated by this Agreement under the HSR Act shall have expired or been terminated.

§5.08 *Cyprus Amax Minerals Company Consent*

Cyprus Amax Minerals Company, as successor to Amax Inc., shall have executed an environmental indemnification agreement with the Purchaser, substantially in the form of Schedule 4.14, which shall be similar to the environmental indemnity that the Parent received from Amax Inc. pursuant to the Stock Purchase Agreement, dated July 15, 1988 between Amax Inc. and St. Joe Resources Corporation and the Environmental Indemnification Agreement, dated August 31, 1988 between Amax Inc. and the Parent (it being understood that this condition shall be deemed satisfied or waived if the Purchaser determines that the condition in Section 4.14 shall have been satisfied).

§5.09 *Escrow Agreement*

The Escrow Fund shall have executed and delivered by the parties thereto.

VI. *Covenants and Agreements of the Parent, BRZ and SRC*

The Parent, BRZ, and SRC jointly and severally covenant and agree as follows:

§6.01 *Access*

Until the earlier of the Closing or termination of this Agreement pursuant to Article VIII or otherwise (the "Release Time"), the Parent shall cause BRZ and SRC to afford the officers, employees, counsel, agents, investment bankers, accountants, and other representatives of the Purchaser and its lenders, investors, and prospective lenders and investors reasonable access to the plants, properties, books, and records relating to BRZ and SRC, shall permit them to make extracts from and copies of such books and records, and shall from time to time furnish the Purchaser with such additional financial and operating data and other information as to the financial condition, results of operations, businesses, properties, assets, liabilities, or future prospects of BRZ and SRC as the Purchaser from time to time may request. Until the Release Time, the Parent shall cause the independent certified public accountants of the Parent to make available to the Purchaser and its independent certified public accountants the work papers relating to the audits of BRZ and SRC.

§6.02 *Conduct of Business*

Except as set forth in Schedule 6.02, until the Release Time, the Parent shall use its reasonable best efforts to cause BRZ and SRC to conduct their affairs so that at the Closing no representation or warranty of the Parent, BRZ, or SRC will be inaccurate in any material respect, as if made again at the Closing, no covenant or agreement of the Parent, BRZ, or SRC will be breached, and no condition in this agreement will remain unfulfilled by reason of the actions or omissions of BRZ, SRC, or the Parent. Except as otherwise requested by the Purchaser in writing, until the Release Time, the Parent shall cause BRZ and SRC to use their

reasonable best efforts to preserve the business operations of BRZ and SRC intact, to keep available the services of their present personnel, to preserve in full force and effect the contracts, agreements, instruments, leases, licenses, arrangements, and understandings of BRZ and SRC, and to preserve the good will of their suppliers, customers, and others having business relations with any of them. Except as set forth in Schedule 6.02, until the Release Time, the Parent shall cause BRZ and SRC to conduct their business and operations in all respects only in the ordinary course.

§6.03 *Advice of Changes*

Until the Release Time, the Parent shall promptly, and in no event later than the earlier of (a) the Closing and (b) three days after becoming aware, advise the Purchaser in a detailed written notice of any fact or occurrence or any pending or threatened occurrence of which it has knowledge that (A) existed on or before the date of this Agreement, was required by the terms of this Agreement to be set forth or disclosed in or pursuant to this Agreement or a Schedule hereto and was not so disclosed, (B) if existing and known at the date of this Agreement, would have been required to be set forth or disclosed in or pursuant to this Agreement or a Schedule hereto, (C) if existing and known at any time prior to or at the Closing, would make the performance by any party of a covenant in this Agreement impossible or make such performance materially more difficult than in the absence of such fact or occurrence, or (D) if existing and known on the Closing Date, would cause a condition to any party's obligations under this Agreement not to be fully satisfied.

§6.04 *Confidentiality*

The Parent shall insure that all confidential information the Parent or any of its counsel, agents, investment bankers, or accountants may now possess or may hereafter create

or obtain relating to the financial condition, results of operations, business, properties, assets, liabilities, or future prospects of BRZ, SRC, the Purchaser, any affiliate of any of them, or any customer or supplier of any of them or any such affiliate shall not be published, disclosed, or made accessible by any of them to any other person or entity at any time or used by any of them, except pending the Closing in the business and for the benefit of BRZ or SRC, in each case without the prior written consent of the Purchaser; provided, however, that the restrictions of this sentence shall not apply (a) with respect to the obligations of BRZ and SRC after the Closing, (b) with respect to the obligations of all such persons and entities after this Agreement is rightfully terminated, but only to the extent such confidential information relates to the financial condition, results of operations, business, properties, assets, liabilities, or future prospects of BRZ, SRC, of any affiliate of any of them, or (insofar as such confidential information was obtained directly by BRZ, SRC, or any such affiliate from any customer or supplier of any of them) of any such customer or supplier, (c) as may otherwise be required by law, (d) as may be necessary or appropriate in connection with the enforcement of this Agreement, or (e) to the extent such information shall have otherwise become publicly available.

§6.05 *Other Proposals*

Until the Release Time, the Parent shall not, and shall neither authorize nor permit BRZ, SRC, or any officer, director, employee, counsel, agent, investment banker, accountant, or other representative of any of them, directly or indirectly, to: (a) initiate contact with any person or entity in an effort to solicit any Takeover Proposal (as such term is defined in this Section 6.05); (b) cooperate with, or furnish or cause to be furnished any non-public information concerning the business, properties, or assets of BRZ or SRC to, any person or entity in connection with any Takeover Proposal; (c) negotiate with any person or entity

with respect to any Takeover Proposal; or (d) enter into any agreement or understanding with the intent to effect a Takeover Proposal. The Parent shall immediately give written notice to the Purchaser of the details of any Takeover Proposal of which it becomes aware. As used in this Section 6.05, "Takeover Proposal" shall mean any proposal, other than as contemplated by this Agreement, for a merger, consolidation, reorganization, other business combination, or recapitalization involving BRZ or SRC, or for the acquisition of a substantial portion of any of their respective securities or assets.

§6.06 Consents Without Any Condition

The Parent shall not, and shall not permit BRZ or SRC to, enter into any arrangement with Zore, Inc. that would have a reasonable risk of prejudicing (i) any material contract, agreement, instrument, lease, license, commitment, arrangement, or understanding binding on or affecting BRZ or SRC, or to or by which its business, properties, or assets are subject, or (ii) the relationships of BRZ or SRC with its customers or suppliers.

§6.07 Covenant Not to Compete

If the Closing takes place, until the third anniversary of the Closing, the Parent agrees that in consideration of the obligations of the Purchaser hereunder, neither the Parent nor any of its affiliates that it controls shall, anywhere in the United States or Canada, engage in, or participate in an entity that is substantially engaged in, the business of producing, refining, or selling zinc metal.

§6.08 Insurance

Prior to the Closing, the Parent shall cause all casualty and liability insurance coverage currently in effect with respect to BRZ and SRC to remain in effect on substantially

the same terms as in effect on the date hereof and apply all insurance proceeds in respect of any casualty to BRZ or SRC, as the case may be.

§6.09 *Satisfaction of Conditions*

The Parent shall use its best efforts, except as to Section 4.01, in respect of which the Parent shall use its reasonable best efforts, to cause the conditions to the obligations of the Purchaser in this Agreement (other than those set forth in Schedule 6.09) to be satisfied as soon as possible.

§6.10 *Audited Financial Statements*

The Parent shall cause to be delivered to the Purchaser, prior to the Closing, true and correct copies of statements of operations of BRZ for the eight months ended August 31, 1995 and statements of assets to be acquired and liabilities to be assumed for BRZ as of December 31, 1994 and August 31, 1995, in each case audited by Ernst & Young L.L.P., with their report thereon. Except as set forth in Schedule 6.10, the financial statements referred to in this Section 6.10 shall be prepared in accordance with generally accepted accounting principles consistently applied.

§6.11 *Indemnification*

The Parent agrees to indemnify the Purchaser and Korea Zinc Co., Ltd., and their investment bankers, counsel, accountants, advisors, insurance companies, consultants, officers, directors, employees, and agents (including, without limitation, the employees of BRZ and SRC who become employees of the Purchaser or any of its affiliates) against and hold them harmless from any loss, liability, claim, damage, or expense (including reasonable attorneys' fees and disbursements), as and when incurred by the Purchaser or Korea Zinc Co.,

Ltd., or their investment bankers, counsel, accountants, advisors, insurance companies, consultants, officers, directors, employees, and agents for or on account of or arising from or in connection with any Excluded Liabilities. Section 6.11 shall survive the Closing of this Agreement.

VII. *Covenants and Agreements of the Purchaser*

The Purchaser shall use its best efforts to cause the conditions to the obligations of the Parent in this Agreement to be satisfied as soon as possible.

§7.01 *Cooperation*

The Purchaser shall cause BRZ and SRC, on and after the Closing Date, to afford the Parent and its agents access to their properties, books, records, employees, and auditors to the extent necessary to permit the Parent to determine any matter relating to its rights and obligations hereunder or to any period ending on or before the Closing Date.

§7.02 *Advice of Changes*

Until the Release Time, the Purchaser shall promptly, and in no event later than the earlier of (a) the Closing and (b) three days after becoming aware, advise the Parent in a detailed written notice of any fact or occurrence or any pending or threatened occurrence of which it has knowledge that (A) existed on or before the date of this Agreement, was required by the terms of this Agreement to be set forth or disclosed in or pursuant to this Agreement or a Schedule hereto and was not so disclosed, (B) if existing and known at the date of this Agreement, would have been required to be set forth or disclosed in or pursuant to this Agreement or a Schedule hereto, (C) if existing and known at any time prior to or at the Closing, would make the performance by any party of a covenant in this Agreement

impossible or make such performance materially more difficult than in the absence of such fact or occurrence, or (D) if existing and known on the Closing Date, would cause a condition to any party's obligations under this Agreement not to be fully satisfied.

§7.03 Computer Services Agreement

In exchange for \$1,000 per month, the Purchaser shall provide Big River Coal Corporation and its subsidiaries with access for a period of twelve months to the AS400 computer of BRZ consistent with past practice as described in Schedule 7.03.

§7.04 Employee Matters

The Purchaser shall assume each of the Plans listed on Schedule 7.04(a) (the "Assumed Plans") with respect to all employees and former employees of BRZ. Notwithstanding the foregoing, the Purchaser shall not be obligated to continue the Assumed Plans for any specified period. The Purchaser shall not assume, have any responsibility for the continuation of, or be a successor employer with respect to any Plan other than the Assumed Plans. Notwithstanding the foregoing or anything else in this Section 7.04, the Purchaser shall assume and discharge all obligations and liabilities in respect of or otherwise related to the employment or termination of employment of the BRZ employees and former BRZ employees (the "Employee Liabilities") including, without limitation, all obligations and liabilities under the Assumed Plans and all obligations and liabilities incurred by BRZ or employees or former employees of BRZ prior to the Closing under any Plan sponsored by the Parent with respect to which BRZ was an adopting employer and which Plan was not assumed by the Purchaser to the extent that any obligation or liability is reflected on the Final Statement or reflected on Schedule 7.04(b). The Parent shall retain all liabilities other than those being assumed by the Purchaser under this Agreement. With respect to any group

health plan, as defined in § 5000(b)(1) of the Code, the Purchaser shall be responsible for the obligations and liabilities relating to or arising under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), including, without limitation, the obligation to provide COBRA continuation coverage to current or former BRZ employees currently entitled to coverage under COBRA as required under § 4980B of the Code and §§ 601-609 of ERISA. On the Closing Date, the Purchaser shall offer employment to all employees of BRZ, including all employees absent from active service for any reason, including, without limitation, by reason of approved leaves of absence, short-term disability or long-term disability under the presently applicable Plans or official policies and procedures of BRZ as of the Closing and shall offer such employees salary, wages and benefits that are substantially similar to the salary, wages and benefits presently applicable to such employees. Notwithstanding the Purchaser's offer of employment to employees of BRZ as of the Closing, nothing in this Agreement shall limit the right of the Purchaser to terminate the employment of any such employee at any time after the Closing, or alter the salary, wages or benefits payable to any such employee at any time after the Closing provided that any liability or obligation incurred directly or indirectly as a result thereof shall be for the account of the Purchaser.

§7.05 *Straddle Taxes*

All real property taxes, personal property taxes and similar ad valorem obligations levied with respect to the Assets for a taxable period that includes (but does not end on) the Closing Date (collectively, the "Apportioned Obligations") shall be apportioned between the Parent and the Purchaser as of the Closing Date based on the number of days of such taxable period ending on the Closing Date (with respect to any such taxable period, the "Pre-Closing Tax Period") and the number of days of such taxable period after the Closing

Date (with respect to any such taxable period, the "Post-Closing Tax Period"). The Parent shall be liable for the proportionate amount of such taxes that is attributable to the Pre-Closing Tax Period, and the Purchaser shall be liable for the proportionate amount of such taxes that is attributable to the Post-Closing Tax Period. Upon receipt of any bill for real or personal property taxes relating to the Assets, each of the Parent and the Purchaser shall present a statement to the other setting forth the amount of reimbursement to which each is entitled under this Section 7.05 together with such supporting evidence as is reasonably necessary to calculate the proration amount. The proration amount shall be paid by the party owing it to the other within 10 days after delivery of such statement. In the event that either the Parent or the Purchaser shall make any other payment for which it is entitled to reimbursement under this Section 7.05, the other party shall make such reimbursement promptly but in no event later than 10 days after the presentation of a statement setting forth the amount of reimbursement to which the presenting party is entitled along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement. No payment of any Apportioned Obligations pursuant to this Section 7.05 shall be required to the extent reflected on the Final Statement.

VIII. *Miscellaneous*

§8.01 *Termination*

This Agreement may be terminated and the Closing contemplated hereby may be abandoned at any time prior to the Closing:

- (a) by mutual written consent of the parties hereto;
- (b) by the Purchaser, if, and only if, all breaches of representations,

warranties, covenants, and agreements in this Agreement by the Parent may reasonably be expected to result in a Material Adverse Effect; provided, however, that the Parent shall have

the right to cure any breach that (i) was not willful, (ii) is capable of being cured on or before the earlier of (A) the 180th day after the execution of this Agreement and (B) the 90th day after the Purchaser receives the approval of the Korean Ministry of Finance and Economy for the transactions contemplated hereby (the "Termination Date"), and (iii) provided that, after such cure neither the breach nor the cure, could reasonably be expected to result in a Material Adverse Effect;

(c) by the Purchaser, if the Purchaser shall not have received on or before the 15th day after the execution of this Agreement an opinion, in form reasonably satisfactory to the Purchaser, of Davis Polk & Wardwell that the Agreement attached hereto as Exhibit 8.19 is valid, binding and enforceable in accordance with its terms.

(d) by the Parent, if there shall have been a material breach of any representation, warranty, covenant, or agreement in this Agreement on the part of the Purchaser; provided, however, that the Purchaser shall have the right to cure any breach which (i) was not willful, (ii) is capable of being cured on or before the Termination Date, and (iii) could not reasonably be expected to result in a material increase in the Parent's obligations or risks, financial or otherwise;

(e) by either of the parties hereto, if the Closing shall not have occurred on or before the Termination Date; provided, however, that the right to terminate this Agreement shall not be available to a party whose willful breach hereof has been the cause of, or resulted in, the failure of the Closing to occur on or before such date; and

(f) by either party hereto if any condition becomes incapable of fulfillment through no fault of such party.

In the event of termination and abandonment of the Closing pursuant to this Section 8.01, written notice thereof shall forthwith be given to the other party to this Agreement and this Agreement shall terminate and the Closing shall be abandoned, without

further action by the other party. If this Agreement is terminated as provided in this Section 8.01:

(i) Upon request therefor, each party shall return all documents, work papers, and other material received from the other party relating to the transactions contemplated hereby, whether obtained before or after the execution hereof; and

(ii) neither party shall have any liability or further obligation to the other resulting from such termination, except as otherwise expressly provided in this Agreement and except (A) that this sentence, Section 6.12, and the proviso of Section 8.01(e) shall remain in full force and effect and (B) neither party waives any claim or right against a breaching party, to the extent that such termination results from the willful breach by a party of any of its representations, warranties, covenants, or agreements in this Agreement.

§8.02 Fees

The parties each represent and warrant to the other that, other than Morgan Lewis Githens & Ahn, LP, which was retained by the Purchaser and the fees of which shall be paid by the Purchaser, and Dillon, Read & Co. Inc., which was retained by the Parent and the fees of which shall be paid by the Parent, no party has dealt with any person, firm, or corporation that is or may be entitled to a broker's commission, finder's fee, investment banker's fee, or similar payment from any other party for arranging the transactions contemplated by this Agreement or introducing the parties to each other. Except as otherwise herein provided, each party shall be responsible for its own fees, costs, and expenses in connection with this Agreement and the transactions contemplated hereby; provided, that no fees, costs or expenses incurred by or on behalf of the Parent shall be paid by BRZ or SRC unless, such fees, costs, or expenses do not relate to the transactions contemplated hereby and are paid prior to the Closing and result in no liability or obligation on the part of BRZ or SRC

following the Closing. The Purchaser and the Parent shall each pay half the HSR Act filing fee.

§8.03 *Publicity*

Neither party, without the consent of the other, which shall not be unreasonably withheld, shall make any public announcement prior to the Closing in connection with the transactions contemplated hereby or otherwise disclose this Agreement, except as may be required by law and except that the Parent may show this Agreement to creditors that claim a secured interest in BRZ.

§8.04 *Further Actions*

At any time and from time to time, each party agrees, at its expense, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Agreement.

§8.05 *Availability of Equitable Remedies*

Since a breach of the provisions of this Agreement could not adequately be compensated by money damages, either party shall be entitled, either before or after the Closing, in addition to any other right or remedy available to it, to an injunction restraining such breach or a threatened breach and to specific performance of any such provision of this Agreement, and in either case no bond or other security shall be required in connection therewith, and the parties hereby consent to the issuance of such an injunction and to the ordering of specific performance.

§8.06 *No Survival*

The representations and warranties in this Agreement (other than in Sections 1.04, 2.03, and 8.02) shall not survive the Closing or any delivery of the purchase price by the Purchaser. The parties acknowledge and agree that following the Closing they shall have no right or remedy against any other party for breach of any representation, warranty, covenant, or agreement in this Agreement (other than Sections 2.03, 6.11, and 8.02) occurring on or prior to the Closing Date and shall have no liability to any other party, except for any liability that may arise under or as a result of a breach of any covenant or agreement to be performed on or after the Closing Date (including Section 6.11).

§8.07 *Modification*

This Agreement and the Schedules hereto set forth the entire understanding of the parties with respect to the subject matter hereof, supersede all existing agreements between them concerning such subject matter, and except as provided in Section 8.17 may be modified only by a written instrument duly executed by each party.

§8.08 *Notices*

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be mailed by certified mail, return receipt requested (or by the most nearly comparable method, if mailed from or to a location outside the United States) or by Federal Express, Express Mail, or similar overnight delivery or courier service or delivered (in person or by telecopy, telex, or similar telecommunications equipment) against receipt to the party to whom it is to be given at the address of such party set forth at the beginning of this Agreement (or to such other address as the party shall have furnished in writing in accordance with the provisions of this Section 8.08) with a copy to each of the other

parties hereto. Any notice given shall be addressed to the attention of the Corporate Secretary. Any notice or other communication given by certified mail (or by such comparable method) shall be deemed given at the time of certification thereof (or comparable act), except for a notice changing a party's address, which will be deemed given at the time of receipt thereof. Any notice given by other means permitted by this Section 8.08 shall be deemed given at the time of receipt thereof. Copies of all notices and communications, if to the Purchaser, shall be sent to Arnold S. Jacobs, Proskauer Rose Goetz & Mendelsohn LLP, 1585 Broadway, New York, New York 10036. Copies of all notices and communications to the Parent, BRZ, or SRC shall be sent to Stephen Case, Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017. Copies sent to either Proskauer Rose Goetz & Mendelsohn LLP or Davis Polk & Wardwell shall not constitute notice.

§8.09 *Waiver*

Any waiver by any party of a breach of any term of this Agreement shall not operate or be construed as a waiver of any other breach of that term or any other term of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing.

§8.10 *Binding Effect*

The provisions of this Agreement shall be binding upon and inure to the benefit of the Parent, the Purchaser, and their respective successors and assigns.

§8.11 *Assignment*

This Agreement shall not be assigned by operation of law or otherwise nor shall any rights or obligations hereunder be transferred by one party without the prior written consent of the other party; provided that the Parent, BRZ, and SRC shall have the right to assign all or any part of their rights and obligations to the parties listed in Schedule 8.11, provided, however that no such assignment shall relieve the assignor of its obligations hereunder.

§8.12 *No Third Party Beneficiaries*

This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.

§8.13 *Severability*

If any provision of this Agreement is invalid, illegal, or unenforceable, the remainder of this Agreement shall remain in effect, and if any provision is inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances.

§8.14 *Headings*

The headings in this Agreement are solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

§8.15 *Counterparts*

This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

§8.16 *Governing Law*

(a) This Agreement shall be governed by and construed in accordance with the laws of New York, without giving effect to conflict of laws.

(b) To the fullest extent permitted by applicable law, each party hereto agrees that, any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall only be brought in the United States District Court for the Southern District of New York or any other New York State court sitting in New York City, and each of the parties hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party hereby waives personal service of process upon it and consents that any such service of process may be made by certified or registered mail, return-receipt requested, directed to each at its address last specified for notices hereunder (service so made shall be deemed completed five days after the same shall have been so mailed).

§8.17 *Revised Schedules*

(a) The Parent may revise the Schedules to this Agreement with regard to information which was not known to an executive officer of the Parent, BRZ, or SRC prior to the execution of this Agreement by delivering the revised Schedules to the Purchaser within

fourteen days of the execution of this Agreement. The Purchaser shall have the right to review the revised Schedules for a period of fourteen days after the receipt thereof. At any time within the fourteen-day period, the Purchaser shall have the right to terminate this Agreement by notice to the Parent if the revised information contained in the Schedules or in any exhibits thereto could reasonably be expected to have a Material Adverse Effect. This notice, if given, shall specify the information forming the basis for the decision to terminate. The Parent shall promptly provide the Purchaser with such additional information as the Purchaser shall promptly and reasonably request to evaluate the revised Schedules. The Purchaser shall use all reasonable efforts to evaluate the revised Schedules and additional information as promptly as practicable (it being understood that the Purchaser's right to terminate this Agreement as provided in this Section shall not continue, however, beyond the 10th day after the receipt of all such revised Schedules and additional information).

(b) The Parent may revise the Schedules to this Agreement to reflect any events that occur after the date hereof by delivering revised Schedules to the Purchaser at any time prior to fifteen days prior to the Closing. The Purchaser shall have the right to review the revised Schedules for a period of fourteen days after the receipt thereof. At any time within the fourteen-day period, the Purchaser shall have the right to terminate this Agreement by notice to the Parent if the revised information contained in the Schedules or in any exhibits thereto could reasonably be expected to have a Material Adverse Effect. This notice, if given, shall specify the information forming the basis for the decision to terminate. The Parent shall promptly provide the Purchaser with such additional information as the Purchaser shall promptly and reasonably request to evaluate the revised Schedules. The Purchaser shall use all reasonable efforts to evaluate the revised Schedules and additional information as promptly as practicable (it being understood that the Purchaser's right to

terminate this Agreement as provided in this Section shall not continue, however, beyond the 10th day after the receipt of all such revised Schedules and additional information).

(c) If this Agreement is terminated as permitted by Section 8.17(a) or 8.17(b), then all further duties and obligations of the Purchaser and Parent shall terminate without further liability of the Purchaser to the Parent or of the Parent to the Purchaser, except as provided in Section 8.01(e)(ii)(B). If the Purchaser does not give notice of its decision to terminate this Agreement pursuant to this Section, the Purchaser shall be deemed to have accepted such revisions, and the Schedules attached hereto as of the date hereof shall be deemed to be superseded by the revised Schedules.

§8.18 *Certain Other Tax Matters*

All transfer, sales, use, stamp and other similar Taxes incurred in connection with the transactions contemplated by this Agreement shall be borne and paid by the Parent. The Purchaser shall, to the extent required by applicable law, join in the execution of any returns relating to such Taxes and shall cooperate in the preparation and filing thereof.

§8.19 *Indemnification*

The Purchaser acknowledges receipt on the date hereof from the parties listed on Schedule 8.11 of the Agreement attached hereto as Exhibit 8.19.

§8.20 *Effectiveness*

This Agreement is effective upon the execution hereof, and the Stock Purchase Agreement dated July 27, 1995 between the Parent and the Purchaser is hereafter null and void and shall have no further force or effect.

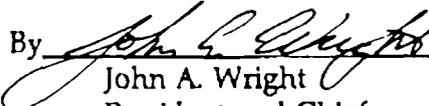
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of

the date first written above.

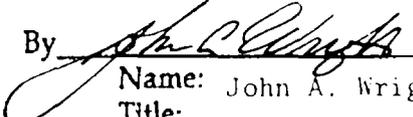
KOREA ZINC COMPANY (USA), INC.

By 
Chang Gurl Choi
President

BIG RIVER MINERALS CORPORATION

By 
John A. Wright
President and Chief
Executive Officer

BIG RIVER ZINC CORPORATION

By 
Name: John A. Wright
Title: President and Chief
Executive Officer

SAUGET REALTY CORPORATION

By 
Name: John A. Wright
Title: President